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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/481,153	01/12/2000	Rodney H. Masters	P01506US2	5245
26271	7590	11/25/2005	EXAMINER	
FULBRIGHT & JAWORSKI, LLP			YIP, WINNIE S	
1301 MCKINNEY			ART UNIT	
SUITE 5100			PAPER NUMBER	
HOUSTON, TX 77010-3095			3636	

DATE MAILED: 11/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/481,153

Applicant(s)

MASTERS ET AL.

Examiner

Winnie Yip

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 June 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 7-13 and 18-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 7-13 and 18-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 January 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## ***Part II DETAILED ACTION***

This office action is in response to applicant's amendment filed on June 22, 2004.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Response to Amendment***

1. The amendment to the claims filed on June 22, 2004 does not comply with the requirements of 37 CFR 1.173 (b)(2) and (c) which states:

**(b) Making amendments in a reissue application:** An amendment in a reissue application is made either by physically incorporating the changes into the specification when the application is filed, or by a separate amendment paper. If amendment is made by incorporation, markings pursuant to paragraph (d) of this section must be used. If amendment is made by an amendment paper, the paper must direct that specified changes be made.

(1) Specification other than the claims. Changes to the specification, other than to the claims, must be made by submission of the entire text of an added or rewritten paragraph, including markings pursuant to paragraph (d) of this section, except that an entire paragraph may be deleted by a statement deleting the paragraph without presentation of the text of the paragraph. The precise point in the specification must be identified where any added or rewritten paragraph is located. This paragraph applies whether the amendment is submitted on paper or compact disc (see §§ 1.52(e)(1) and 1.821(c), but not for discs submitted under § 1.821(e)).

(2) Claims. An amendment paper must include the entire text of each claim being changed by such amendment paper and of each claim being added by such amendment paper. For any claim changed by the amendment paper, a parenthetical expression "amended," "twice amended," etc., should follow the claim number. Each changed patent claim and each added claim must include markings pursuant to paragraph (d) of this section, except that a patent claim or added claim should be canceled by a statement canceling the claim without presentation of the text of the claim.

(3) Status of claims and support for claim changes. Whenever there is an amendment to the claims pursuant to paragraph (b) of this section, there must also be supplied, on pages separate from the pages containing the changes, the status (i.e., pending or canceled), as of the date of the amendment, of all patent

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claims and of all added claims, and an explanation of the support in the disclosure of the patent for the changes made to the claims.

(d) Changes shown by markings . Any changes relative to the patent being reissued which are made to the specification, including the claims, upon filing, or by an amendment paper in the reissue application, must include the following markings:

(1) The matter to be omitted by reissue must be enclosed in **brackets**; and  
(2) The matter to be added by reissue (including the entire new claim) must be **underlined**, except for amendments submitted on compact discs (§§ 1.96 and 1.821(c)). Matter added by reissue on compact discs must be preceded with "<U>" and end with "</U>" to properly identify the material being added.

(e) Numbering of patent claims preserved. Patent claims may not be renumbered. The numbering of any claim added in the reissue application must follow the number of the highest numbered patent claim.

2. In response the amendment filed on June 22, 2004, the status of claims 7 and 18-21 such as "(original)", "(amended)" or "(previous amended)" or "(new)" are missed. And, the list of claims 8-13 has been missed. In addition, the previous amendment filed April 2, 2004, the claims 8 and 9 fails to include the amended subject matters as the preliminary amended filed January 20, 2000. A new list of claims including all previous amended subject matter is required.

#### ***Oath/Declaration***

3. The reissue oath/declaration filed January 16, 2004 with this application is defective (see 37 CFR 1.175 and MPEP § 1414) because of the following:

The reissue oath/declaration filed January 16, 2004 with this application is defective because it fails to identify at least one error which is relied upon to support the reissue application. See 37 CFR 1.175(a)(1) and MPEP § 1414. Notice, the supplemental declaration filed January 16, 2005 stated the error being corrected was "the subject matter of

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claim 7 does not clearly describe the subject invention” which is not insufficient to specifically explain what at least one error is found for upon which reissue is based. A new supplemental oath/declaration is needed with an explanation of the error in more details such as which language of patented claim 7 does not clearly describe the subject invention.

***Claims rejection/35 U.S.C. 251***

4. Claims 7-13 and 18-21 are rejected as being based upon an insufficient reissue oath/declaration under 35 U.S.C. 251. See 37 CFR 1.175. The nature of the defect is set forth above.

5. In accordance with 37 CFR 1.175(b)(1), a supplemental reissue oath/declaration under 37 CFR 1.175(b)(1) must be received before this reissue application can be allowed.

Receipt of an appropriate supplemental oath/declaration under 37 CFR 1.175(b)(1) will overcome this rejection under 35 U.S.C. 251. An example of acceptable language to be used in the supplemental oath/declaration is as follows:

“Every error in the patent which was corrected in the present reissue application, and is not covered by a prior oath/declaration submitted in this application, arose without any deceptive intention on the part of the applicant.”

Notice, the supplemental reissue oath/declaration filed on February 26, 2003 which was only signed by the assignee. Since the application is a broadening reissue, the supplemental declaration to cover “errors corrected during prosecution” **must be signed by the inventors also.**

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6. A new oath/declaration and the supplemental reissue oath/declaration for correction of problems as set forth above can be resubmitted with a single declaration.

7. If a joint inventor refuses to join in an application for patent or cannot be found or reached after diligent effort, the application may be made by the other inventor on behalf of himself or herself and the nonsigning inventor. The oath or declaration in such an application must be accompanied by a petition including proof of the pertinent facts, the fee set forth in § 1.17(h), and the last known address of the nonsigning inventor. The nonsigning inventor may subsequently join in the application by filing an oath or declaration complying with § 1.63.

***Allowable Subject Matter***

8. Claims 7-13 and 18-21 would be allowable if the rejection(s) under 35 U.S.C. 251 set forth in this Office action.

***ACTION IS FINAL***

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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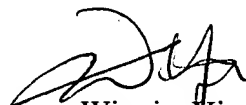
however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

***Inquiry Contacts***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Winnie Yip whose telephone number is 571-272-6870. The examiner can normally be reached on M-F (9:30-5:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Cuomo can be reached on 571-272-6856. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Winnie Yip  
Primary Examiner  
Art Unit 3636

wsy  
November 14, 2005